



Scottish Natural Heritage

All of nature for all of Scotland

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DEPARTMENT OF PLANNING & TRANSPORT									
17 SEP 2009									
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For the attention of Mr David Bryce

15 September 2009
Your Ref: 09/0527/PP
Our Ref: CNS/EIA/R 56503

Dear Sir

THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 1999

ENGINEERING OPERATIONS COMPRISING REMEDIATION & BULK EARTHWORKS AT THE FORMER ROYAL ORDNANCE FACTORY SITE, STATION ROAD, BISHOPTON

Thank you for consulting Scottish Natural Heritage (SNH) over the above application and accompanying Environmental Statement (ES).

1. Background to the current proposal

This application relates to the decontamination and redevelopment of a 923ha area of the old Bishopton Royal Ordnance Factory (ROF) site on which we have previously advised the Council in December 2006. The current application relates mainly to earthworks required to remediate and prepare the development area of the site for proposed future development. These works will require the felling of large numbers of trees and the removal of existing on-site buildings, and will result in the creation of a number of new "landscape mounds" within the wider ROF Bishopton site.

Our consultation response in relation to the over-arching outline application gave a full appraisal of the likely natural heritage impacts of the wider proposals as then detailed, as well as listing a number of conditions and recommendations that we believed would be required in order to ensure that these impacts were made

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acceptable. It is our understanding that this outline permission has now been granted, and has indeed been made subject to the required conditions. However, site remediation and reclamation is the element of the wider proposals with the greatest potential for natural heritage impacts, and many of the conditions which we believed to be necessary in order to ensure that the natural heritage impacts of the wider proposals are acceptable are also specifically required in relation to these earthworks. This is recognised by the applicants in their ES, which includes commitments to meeting most of these requirements.

The advice given below therefore relates specifically to the proposed earthworks now under consideration.

2. SNH Position

The site has considerable current natural heritage interest – particularly in terms of legally protected species - and, if not undertaken in a sympathetic fashion, the proposed site preparation and earthworks could have significant detrimental impacts. Furthermore, the lengthy timescale for the proposed works presents challenges in terms of compliance with international protected species legislation. A full discussion of all of these issues and justification of SNH's position is included as Appendix I to this response.

SNH would therefore strongly advise that any permission for these remediation and reclamation earthworks be made subject to the following conditions, intended to protect the natural heritage interest of the site:

1. That a suitably qualified Ecological Clerk of Works is confirmed as being in post prior to any on-site works commencing. This appointment should be approved by the relevant consenting authority in consultation with SNH.
2. That the "Ecological Design and Management Plan" proposed as a means of addressing the ecological impacts of the wider ROF Bishopton redevelopment proposals will be produced by the applicants prior to any development works relevant to this application being undertaken on site. The scope, content and means of implementation of this Plan will be formally agreed by the Planning Authority in consultation with SNH. The purpose of this document will be twofold – to address the legislative, licensing and mitigation requirements of protected species including European Protected Species, and to ensure optimal management and mitigation for the full range of habitats and species present on site throughout the lifetime of the proposals (see Appendix I for a detailed discussion of these issues). The Plan will establish clear lines of responsibility and be subject to regular update and review. The implementation of this Plan will be overseen by the Ecological Clerk of Works.
3. That in addition to the Ecological Design and Management Plan, a more detailed Badger Management Plan will be produced, the content of which will be agreed by the Planning Authority in consultation with SNH prior to any development works relevant to this application being undertaken on site. The purpose of this document will be to manage the complex issue of mitigating

the loss of badgers setts and access to foraging territory throughout the lifetime of the proposal and will form the basis of all badger development license applications to SNH. The implementation of this Plan including regular update and review will be overseen by the Ecological Clerk of Works.

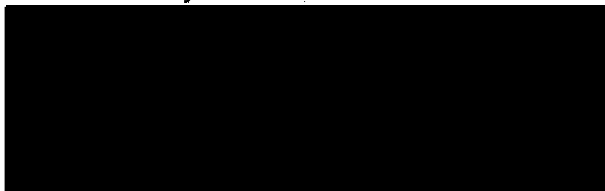
Finally, though not a point of objection to the development proposal in principle, SNH would seek some clarification with regard to the proposed exclusion under licence of the one bat roost identified on site.

It is suggested in the ES that the location of this roost in relation to the proposed phasing of the earthworks requires it to be removed as soon as possible. Removal during winter 2009 is therefore suggested - which is likely to be prior to the production and agreement of the Ecological Design and Management Plan intended to manage such protected species licensing issues. However the locational details given in the most recent bat survey report to inform the ES would in fact suggest that the relevant building may not be scheduled for decontamination/demolition for another 4 years.

SNH would seek to ensure that this roost is not removed until such time as it is genuinely required to be removed, and would therefore seek clarification from the applicants with regard to exactly when the relevant building is scheduled for decontamination or demolition.

I hope that the above is sufficient to your requirements, however, please do not hesitate to contact me if there is anything further that you wish to discuss. I would be grateful if you could inform us of your Council's decision regarding this application in due course.

Yours faithfully



DAVE LANG
Area Officer
Strathclyde & Ayrshire

Encs

THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 1999

ENGINEERING OPERATIONS COMPRISING REMEDIATION & BULK EARTHWORKS AT THE FORMER ROYAL ORDNANCE FACTORY SITE, STATION ROAD, BISHOPTON

SNH APPRAISAL OF THE LIKELY IMPACTS OF THE PROPOSAL ON FEATURES OF NATURAL HERITAGE INTEREST

1. Ecological Impacts

With any large-scale development there is the potential for a wide range of impacts on sensitive ecological receptors. Some of these can be addressed at the design stage through the siting of individual elements. However, to ensure that unacceptable impacts are avoided, others will require mitigation works or the adoption of particular working practices.

The Royal Ordnance Factory site at Bishopton has been largely disused for some years (the main Royal Ordnance Factory closing in 2001), during which time public access to much of the site has remained highly restricted (largely for safety reasons). The consequent absence of human disturbance over this time has led to an associated increase in the site's biodiversity. Surveys submitted in support of this and other relevant planning applications have suggested that the numbers of many wildlife species – including several statutory protected species – appear to have reached the natural carrying capacity of the site. As is recognised in the current ES, ensuring that adverse effects on these species are minimised while still facilitating the development proposals – i.e. attempting to maintain the site's wildlife carrying capacity while also allowing for the required habitat losses - will be a significant challenge.

In order to ensure that the ecological impacts of the wider proposals for the ROF Bishopton site are minimised, the requirements with regard to protected species are met, and that any mitigation programmes are successful; it will be essential that works – including the remediation earthworks currently under consideration - are carefully overseen by individuals with relevant expertise in ecological issues. SNH therefore strongly advised in relation to the earlier consultation over the over-arching outline application for the wider redevelopment proposals at ROF Bishopton that, should consent be granted, an "Ecological Design and Management Plan" should be produced by the applicants - the scope, content and means of implementation of which will be formally agreed by the Planning Authority in consultation with SNH prior to any development works being undertaken on site. The purpose of this Plan will be to address the legislative, licensing and mitigation requirements of protected species, and to ensure optimal management and mitigation for the full range of habitats and species present on site throughout the lifetime of the development. The Plan will establish clear lines of responsibility and be subject to regular update and review. The implementation of this Plan on-site will be overseen by a qualified Ecological Clerk of Works. SNH understands that the outline permission for the redevelopment proposals has indeed been made conditional on the production of such a Plan.

As many of the most immediate and significant natural heritage impacts of the wider proposals will relate to the initial site preparation works, it is therefore essential with regard to the environmental impacts of the proposed remediation earthworks here under consideration that no relevant works be allowed to commence on site until such time as this plan is in place. The applicants are aware of this requirement as is stated in Section 14.120, and with a proposed approach described in Appendix 14.14, of the current ES.

(a) European Protected Species

Both bats and otters are listed on Annex IV of the EC Habitats Directive (92/43/EEC) for special protection as European Protected Species (EPS). This means that under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) it is illegal to:

- deliberately or recklessly kill, injure, disturb or capture bats or otters.
- damage or destroy the breeding sites or resting places of bats or otters.

SNH is obliged to inform regulatory bodies about EPS which may be affected by any development proposal. Where it is proposed to carry out works which will disturb EPS or their places of shelter - whether or not they are present in these refuges - a licence must first be acquired from the Scottish Government. The likely impacts on EPS and the requirement or otherwise for any associated licensing must be established prior to the granting of any planning permission. The legislative framework surrounding EPS is described in further detail in Annex A to this response.

A further European Protected Species – great crested newt – is not known from the ROF Bishopton site and is highly unlikely to be affected by the proposals. However SNH welcomes the commitment to best practice found within the applicants' ES with regard to precautionary measures and monitoring in relation to this species.

(i) Otters

Otters have been recorded as utilising the site's many water courses in all mammal surveys undertaken in relation to these development proposals.

The latest otter survey of the full ROF Bishopton site undertaken in 2009 recorded (either certainly or tentatively) a total of 11 places of rest or shelter used by otters. This comprised of only one certain holt – near the southern boundary of the site in an area that will not be affected by the currently proposed earthworks. However the majority of the couches/lie-ups identified are in the vicinity of the development site area and therefore the earthworks, with most being concentrated around the existing fire ponds. The area around the ponds is scheduled for remediation in the first year of work.

Previous surveys suggested that there may in fact have been a breeding holt located at the fire ponds. The most recent work however has suggested that otter activity is no longer as strictly focussed on these ponds as had been shown by earlier surveys, with an increase in the spatial use of the wider site.

As suggested in the ES, SNH would expect that any works within 30 metres of an otter holt or couch/lie-up will require to be licensed by Government. In determining any application for such a licence, Government are likely to consult SNH with regard to the likely impacts on the favourable conservation status of the otters concerned (see below and Annex A).

It is stated in the ES that no otter holts in the locations currently identified will actually require to be removed/destroyed to facilitate the remediation earthworks. It is less clear, however, whether any couches/lie-ups will be affected by the suggested realignment of water courses. Unmitigated disturbance to all otter places of rest or shelter on site from adjacent development activity would potentially have significant implications for the favourable conservation status of otters locally – for example if all local sites were abandoned. It will therefore be essential that any licence applications for disturbance to such sites include appropriate mitigation proposals. In addition to direct disturbance to protected places of otter rest and/or shelter, the proposed earthworks may also result in some disturbance or disruption to otter feeding or travelling habitat.

SNH therefore welcomes the proposals within the ES to identify opportunities to improve shelter and feeding habitat for otters, to create and maintain travelling routes for otters remote from the areas of high development activity, and to minimise disturbance to identified sensitive areas. We are also pleased to note the commitment to a pre-works otter survey of any water course due to be affected by operations.

It should be noted however, that - as with most other protected species on site – otters are highly mobile and their distribution across the site is likely to continue to change throughout the lifetime of the proposed earthworks (scheduled to take up to fifteen years). It is therefore impossible to determine in advance where the particularly sensitive locations for this species will be during different phases of the earthworks – as is evidenced by the changes to the distribution of protected places of rest/shelter identified by the most recent survey work. This may even lead to situations where, for example, important otter breeding holts are established in areas where they would require to be destroyed if the development is to proceed as currently proposed.

It is therefore very difficult to state with any certainty what the impacts on otters (or indeed any other protected species) will be over the full lifetime of this proposal. This gives rise to some difficulties in relation to

the legislative requirements relating to EPS (see Annex A) which were detailed in our advice to Renfrewshire Council in relation to the over-arching outline application for the redevelopment of the ROF Bishopton site. These issues - and the possible solutions to protected species issues in general at the ROF Bishopton site - are discussed again further below.

(ii) Bats

Surveys from 2006, to inform the determination of the over-arching outline application for redevelopment of the wider site, recorded some degree of bat foraging activity along linear and water features within the ROF Bishopton site, as well as a soprano pipistrelle bat (*Pipistrellus pygmaeus*) maternity roost at Dargavel House. Renewed surveys in June 2009, to update understanding of protected species at the site and to inform the current EIA, revealed that while bat foraging levels remained largely similar to those recorded in 2006, the maternity roost at Dargavel House was no longer active. A small pipistrelle roost was recorded however within a sub-station building at the edge of the ROF site on Glenshinnoch Road (shown as approximately NS428698 in Appendix 1 of the applicant's bat survey report).

In terms of the likely impacts of the current application, Dargavel House will not be affected by the proposed earthworks - however the Glenshinnoch Road roost is in a location that will necessitate the existing building to be removed. As such, a licence to destroy the roost would be required from the Scottish Government.

The ES states (Section 14.101) that this roost has been located in the "Phase 0 and 1 survey area". As such, building decontamination would be scheduled for the first 2 years of the development and the applicants have therefore proposed removal of this roost under licence from the Scottish Government during the winter of 2009 (assuming that pre-removal checks do not reveal its use as a winter hibernation roost).

In determining any application for such a licence, Government are likely to consult SNH with regard to the likely impacts on the favourable conservation status of the bats concerned (see below and Annex A). In this case, we would be considering the removal of a small roost for a relatively locally common bat species. The impacts of its removal are therefore likely to be acceptable provided appropriate mitigation - such as the provision of suitable alternative roosting opportunities on structures to be retained - can be included. It is in fact recognised in the ES that such mitigation is likely to be required if a licence is to be granted.

However the applicant's bat survey report appears to show this roost located in a building within an area to be remediated during 'Phase 3' of the proposed works. If this is in fact the case, the relevant building decontamination works may not in fact begin until year 4 of the development (see Table 3.5 of the ES).

SNH would therefore seek clarification with regard to when in fact this roost will require to be removed. We would strongly advise that this removal takes place in the winter immediately prior to the relevant decontamination works.

Although no other active roosts were recorded on site by the survey, the applicant's bat survey report does make clear that there are numerous buildings and trees on site with the potential to support bat roosts or hibernacula which will require to be removed to facilitate the proposed earthworks. As such, SNH would strongly support the recommendation made in the applicant's bat survey report that all suitable trees or buildings be inspected for the presence of bats by a suitably qualified surveyor immediately prior to removal. Should bats be encountered at this or any other stage of operations, site operatives should be aware of their responsibility to immediately discontinue works and seek the advice of SNH with regard to how to proceed and on any licensing requirements.

Although all associated tree felling is to be carried out in the first 2 years of this development, given the length of time over which the required building decontamination to facilitate the proposed earthworks will take place (up to 5 years), it is not possible to say with certainty that because no roosts are currently present in any given group of suitable buildings that this will still be the case in 5 years time, when they are due to be destroyed as part of the decontamination works. Similarly, should any roost be discovered at any point at a given location, this does not necessarily mean that it will still be present there when works are scheduled to begin in the vicinity (as is evidenced by the apparent abandonment of the previously identified Dargavel House roost). It is therefore very difficult to state with any certainty what the impacts on bats (or indeed any other protected species) will be over the full lifetime of this proposal. As with otters (above), this gives rise to some difficulties in relation to the legislative requirements relating to EPS (see Annex A) which were detailed in our advice to Renfrewshire Council in relation to the over-arching outline application for the redevelopment of the ROF Bishopton site, and are discussed again below.

Finally, the proposed remediation earthworks and associated future development will inevitably result in some losses to bat foraging habitat. However, as is also pointed out in the applicant's survey report, if opportunities to enhance bat foraging and roosting within the wider development site and proposed Community Woodland Park are taken, the net impact on bats could ultimately be positive. The ES itself states that mitigation for bats will include the preservation of existing feeding corridors where possible and the erection of appropriately designed bat roosting boxes, and SNH would welcome these proposals.

The Scottish Government has produced a document *European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities on Licensing Arrangements*, (October 2001). Paragraph 29 of this document states the following, where "Regulation 44" refers to the Conservation (Natural Habitats &c) Regulations 1994 (more commonly known as the Habitats Regulations), and "the Directive" refers to EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (known more commonly as the Habitats Directive):

"It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European Protected Species on that site or that, in its opinion, all 3 tests necessary for the eventual grant of a Regulation 44 licence are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the Directive and Regulation 3(4). It would also present the very real danger that the developer of the site would be unable to make practical use of the planning permission which had been granted, because no Regulation 44 license would be forthcoming. Such a situation is in the interests of no one."

As can be seen, the surveys from a number of previous years reported in the ES show that the distribution of EPS within the application site changes over time. Both bats and otters are highly mobile and are potentially able to colonise new areas of the application site each year, possibly vacating previously occupied sites as they do so. As the operations to which this application relates are intended to be undertaken over a fifteen-year period in total, it is therefore impossible to state with certainty what the impacts on these species are likely to be throughout the lifetime of the development. Though bats or otters do not utilise some areas of the application site at present, it cannot be stated with certainty that breeding sites or resting places of EPS will not lie in the path of any given element of these earthworks or other related site remediation at the time it comes to be undertaken.

The 3 tests necessary for the eventual grant of a license under Regulation 44 of the Habitats Regulations are:

1. Is the license required for the purposes of "*preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment*"?
2. Can it be demonstrated that there are no satisfactory alternatives?
3. Can it be demonstrated that the operations to be licensed "*will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range*"?

Only if required to make the third of these tests would the Scottish Government normally seek the expert advice of SNH.

If the operations currently scheduled in relation to this proposal were considered in relation to the distribution of EPS described by the relevant 2009 surveys, a judgement could be reached over what licenses would require to be applied for. A case could then be made and debated as to whether the first 2 tests were met for any or all of the licenses required, however, as discussed above, the distribution of these species might very well change during the fifteen-year time span over which operations will take place. It is therefore very difficult to consider the impacts of this application as a whole in terms of Test 3. For example, were bat species to colonise and roost in a large proportion of the potentially suitable buildings on site prior to their scheduled burning as part of the decontamination process, a case could be made that the loss of these roost sites would indeed *"be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range"*.

Purely in terms the legislation and of paragraph 29 of the Scottish Government interim guidance discussed above, it would therefore be very difficult for the planning authority to grant permission for an application of this unusual nature over the whole of its proposed lifespan.

The applicants are aware of this problem, however, and their approach has been to attempt to address the issue through the use of a system they define as an "Ecology Design and Management Plan". Section 14.120 of the current ES states that:

"To ensure the trouble-free integration of remediation, development, conservation and mitigation works it is proposed to introduce a GIS-based Management plan with a regularly updated database available to site engineers and ecologists alike. Not only would this provide details of the scheduled activity and geographical location, but would highlight restrictions and legislative context."

In terms of the legislative requirements and Scottish Government guidance discussed above, a decision remains to be taken by Renfrewshire Council as to whether the adoption of such an approach would enable them to satisfy themselves *"that the proposed development... will not impact adversely on any European Protected Species"*. However, it is the view of SNH that if an "Ecological Design and Management Plan" such as the one described in the ES was to be adopted and implemented in an appropriate and thorough manner, this could be sufficient to ensure that this is the case.

SNH has therefore previously advised that any permission for the over-arching outline application for decontamination and redevelopment at the ROF site at Bishopton would only be acceptable if made subject to a condition that an "Ecological Design and Management Plan" is submitted by the applicants prior

to any on-site operations commencing - the scope, content and means of implementation of which will be agreed by the planning authority in consultation with SNH. This plan should be sufficient to address protected species issues relating to individual elements of the development as a whole, such as the proposed remediation earthworks, and should be in place prior to their commencement.

The scope of this plan should cover not just those protected species for which it will be essential in order to try and meet the relevant legislative requirements, but as far as possible should cover the full range of natural heritage issues that are relevant to the site and to the proposed development – integrating habitat management, species, landscape and visual issues, and recreational access (further discussion to follow below).

Further conditions will be required to ensure that such a plan is appropriately implemented and followed, that clear lines of responsibility are established from sub-contractors upwards, and that up-to-date versions are available at all times to all operatives on site connected with the development.

As the Plan will be a working document, regularly updated with the results of ongoing survey and monitoring work, version control is likely to be a key issue. A suitably qualified Environmental Clerk of Works or similar should be appointed to oversee the processes of updating and implementing this Plan throughout the lifetime of the development. Any major changes – such as to the distribution of protected species discovered through ongoing monitoring, or to the mitigation proposed to address the needs of such species - should be approved in consultation with SNH and the planning authority.

(b) Other protected species

(i) Badgers

Badgers are protected in Britain by the Protection of Badgers Act 1992 as amended by the Nature Conservation (Scotland) Act 2004. This makes it an offence to:

- deliberately kill, injure or capture a badger, or to attempt to do so;
- destroy, damage or obstruct access to a badger sett;
- disturb a badger while it is occupying a sett.

Where it is proposed to carry out development works which will disturb a badger or involve the damage or destruction of a sett within an occupied badger territory - regardless of when it may last have been used - a licence must first be obtained from SNH. In general, development works of any kind within 50m of a sett will require prior licensing. However, some types of operation using heavy machinery can cause disturbance from even greater distances.

As SNH have previously advised in relation to the outline application for the over-arching development proposals at the ROF Bishopton site, it appears evident that badgers are the most abundant and widespread protected species within the application site and are likely to represent the most significant challenge to the applicants in terms of ecological mitigation. Badger survey work undertaken at the site in the past has suggested that 8 badger clans currently occupy parts of the wider application site. It would appear that 3 of these territories will have their main setts affected by the current earthworks proposals, with many additional subsidiary setts also affected.

Many individual operations required as part of the remediation earthworks are therefore likely to require licensing from SNH as the phased works progress. Through following best practice it may be possible to reduce direct disturbance to badger setts to an acceptable level or to provide appropriate replacement setts in cases where the loss of existing setts is unavoidable. However, the potential loss of badger foraging habitat resulting from the decontamination and development proposals will also represent a significant environmental impact.

Badger numbers at this site appear to have been increasing (until recent times at least), and once again the issue of their distribution and numbers changing throughout the lifetime of the wider proposal will require serious consideration. Their inclusion in the proposed Ecological Design and Management Plan discussed above should go some way to addressing this issue in the long term.

Some proposals for the possible management and relocation of badger populations within the development area of the site were included within the ES for the previous outline application and are again provided with the ES for the proposed earthworks as an "early illustration" of possible solutions. The current ES states that badgers will be managed on-site through a variety of means including the enhancement of the carrying capacity of existing badger territory outwith the development area, in order to allow for disruptions to territory within it without endangering the wellbeing of the animals; the provision of green corridors (e.g. the planting of fast-growing hedgerows with bramble, elder etc.), leading to alternative sett locations and localised habitat enhancement; and translocations carried out under licence. It is recognised that the timing of all such works will be crucial

At the time of the previous consultation, SNH advised that due to the particularly complex ecological issues involved in terms of managing this species - particularly within the development area, which will be most affected by the current earthworks - any permission for the outline application should be made subject to a condition that a separate badger management plan specifically for the Bishopton development

site area be submitted by the applicants and agreed by both SNH and the planning authority prior to any works commencing. This plan was to form the framework within which individual badger development licenses could be applied for to SNH and appropriate could be mitigation considered.

SNH would therefore strongly advise that as the proposed earthworks represent the element of the wider remediation and develop proposals most likely to result in significant impacts to the site's badgers, any permission for the current earthworks proposals specifically should also be made subject to a condition that this badger management plan be produced and agreed prior to any on-site works commencing. The requirement for such an approach is in fact recognised in the applicant's ES (section 14.97).

(ii) Water voles

Water voles are afforded some protection by the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004. This makes it an offence to deliberately or recklessly:

- damage or destroy or obstruct access to any structure or place which Water Voles use for shelter or protection;
- disturb Water Voles while they are using such a place.

It should be noted that - unlike the case with most other protected species - there is no licensing provision within the law regarding offences relating to water voles.

Water voles have previously been known from this site. The most recent dedicated surveys in 2009 suggested that the 4 known water vole locations were still occupied by the species in low numbers, but the results were inconclusive due to sub-optimal survey conditions. What can be concluded with more certainty though is that neither the population nor the range of this species has increased at the ROF Bishopton site in recent years.

All of the confidently identified water vole locations are however near to or within the development area of the site and may therefore be affected by the proposed earthworks.

It is not entirely clear from the content of the ES whether any identified water vole burrows would necessarily be disturbed if the remediation earthworks proceed as proposed. However it is stated (in Table 14.3) that water vole burrows may be affected by the reprofiling of water courses and changes to hydrology on site.

Though there is no way to legally damage or obstruct water vole burrows, it is suggested in the applicant's ES that one way to address this issue may be through the translocation of all water voles in the area to an alternative suitable site. By doing so, this means that the burrows concerned are no longer being actively used by water voles when they are disturbed - thereby avoiding an offence.

It should be noted however that even this approach is fraught with potential legal difficulties. Any works to discourage water voles from an area (such as vegetation strimming) may still be illegal if they cause disturbance to water voles while in their burrows, while live trapping of water voles for translocation almost certainly would be illegal if undertaken at or near to burrows.

As with all other protected species issues at this site, SNH would strongly recommend that detailed proposals to both manage the legislative issues and to mitigate any negative impacts relating to water voles are developed as a part of the proposed Ecological Design and Management Plan to be approved prior to any of these earthworks commencing on-site. However given the above, SNH would strongly advise that the applicants be required to seek independent legal advice in relation to any water vole translocation proposals before they are approved as a part of the Ecological Design and Management Plan.

SNH does however welcome the more general mitigation proposals already suggested in the applicant's ES in relation to water voles, such as the creation and maintenance of green corridors to allow existing populations to colonise new areas, and the trapping and removal of American mink (a non-native species and a significant predator of water voles in Scotland).

(iii) Breeding birds

Protection for all wild bird species was increased by the Nature Conservation (Scotland) Act 2004, now making it an offence to:

- take, damage, destroy or otherwise interfere with the nest of any wild bird while that nest is in use or being built.
- obstruct or prevent any wild bird from using its nest.

Many wild bird species breed within the application site. The most recent survey report provided in support of this ES makes particular mention of barn owl, crossbill and peregrine falcon within the area affected by the proposed earthworks - all species of conservation concern which are listed for additional special protection from disturbance at or near their active nests on Annex 1 of the Wildlife and Countryside Act 1981. Kingfisher - another species given such special protection - was also recorded by these surveys, however this was on the Dargavel Burn in an area that will not be directly affected by the earthworks themselves.

The main way in which disturbance to nesting birds as a result of development activities can be avoided is to undertake tree felling and other site clearance works outwith the main bird breeding season of March to July inclusive. Where this is not operationally possible, all vegetation clearance works should be preceded by a nesting bird survey with steps taken to protect any nest sites identified.

This requirement will apply equally to the large numbers of non-native conifer trees planned for removal to facilitate these earthworks as to the site's native trees and vegetation, due to the known preference of crossbills for such exotic trees as their nesting habitat. Some other species however – and in particular barn owls – will breed within the site's buildings rather than vegetation. So the requirement for pre-works surveys during the 'breeding season' will also apply to their decontamination or demolition.

It should also be realised though that there are some notable exceptions to the standard bird breeding season. Crossbills can begin breeding as early as January, while barn owls can breed at any time so long as there is food available to support their brood. Thus, works may have the potential to impact on one or more species of nesting birds at any time of year, and careful consideration of the requirement for appropriate pre-works surveys will always be required based on the nature of the works concerned and the time of year at which they are scheduled to be carried out.

The issue is recognised in the ES, which – includes a commitment to having all buildings checked for the presence of barn owls by a suitably qualified surveyor prior to their removal regardless of the time of year. It is also recognised though that, once located, nest inspections by a surveyor specifically licensed to disturb the nests of Annex 1 species will be required if development works await the completion of a barn owl breeding cycle at any point.

It is recognised that some loss of bird breeding habitat will be inevitable as a result of the remediation earthworks and indeed the subsequent development. However some of the landscaping, SUDS ponds/reed beds and the proposed enhancement of the habitat around Dargavel Burn within the Community Woodland Park area should provide opportunities to introduce new breeding habitat for a range of species within the wider ROF Bishopton application site and the provision of general bird boxes is also suggested in the ES.

With regard to species-specific mitigation proposals, SNH welcomes the commitment in the ES to the identification and enhancement of "core areas" of high quality barn owl feeding and nesting habitat with the provision of nesting boxes, roosting sites and feeding poles. It is also stated that areas of land adjacent to the site will be identified which may have the potential to accommodate colonisation by barn

owls (given appropriate habitat enhancement). The ES also contains a commitment to barn owl awareness raising with local landowners, with the aim of reducing the local use of harmful rodenticides. This will presumably be a task for the appointed ecological clerk of works.

SNH also welcomes the suggestion in the applicant's ES that advice will be taken to try and ensure that sufficient conifer trees remain on site post-development to ensure that the local population of crossbills remains stable.

(iv) Fish

Surveys to inform the EIA of both the current earthworks and the wider redevelopment proposals for the ROF Bishopton site have reported numerous native fish species in the Dargavel Burn and its tributaries within the application site, as well as a further species (perch) within the Dargavel Fire Ponds. Two of these species – brook lamprey and salmon – are listed on Annex II of the EC Habitats Directive as species for which sites can potentially be designated for their protection (though this is not the case at this site).

The water courses and bodies at ROF Bishopton will be affected to a more significant degree by the wider development proposals, but there may be little direct impacts specifically from the remediation earthworks that are here under consideration. It is suggested in the ES however that some water crossings and discharge points may have to be installed, and this may be required to facilitate the earthworks.

Both salmon and brook lamprey have been recorded in the vicinity of bulk fill or cut areas, however SNH is satisfied that the mitigation measures proposed in section 14.35 – namely that fish passes will be installed wherever necessary to ensure free movement – should be sufficient to preclude any significant negative impacts on these species. SEPA guidance on the avoidance of pollution and/or sedimentation should be adhered to at all times during the remediation earthworks.

It is also suggested in the ES that the Craigton Burn will require to be widened and straightened to provide suitable drainage for the development area of the site, with a storage area created downstream. Though no salmon or lamprey, and few fish at all, have been recorded from the Craigton Burn itself, this water course does form a tributary of the Dargavel Burn where these species are present. We are therefore pleased to note the commitment in the applicant's ES to consulting SNH over mitigation and habitat reinstatement proposals relating specifically to the works at Craigton Burn.

More generally, it is also to be hoped that decontamination of the site as a whole might also improve water quality and therefore the suitability of the affected watercourses for native fish populations.

(v) Ancient woodland

There are 2 (relatively small) woodland stands within the vicinity of the proposed remediation earthworks which are listed within the national Ancient Woodland Inventory - the first to the east of Dargavel Hill, with the second located by the railway line to the north of Bishopton Station. This listing means that there has been continuous tree cover present in these areas for over 150 years, and as such these sites can often provide valuable and stable habitats for a variety of wildlife.

SNH has previously advised in relation to the over-arching proposals for the ROF Bishopton site that the areas of Ancient Woodland within the development area of the site should be retained if at all possible, and incorporated into the landscaping of the development. We are therefore pleased to note that these areas will not be lost in relation to the proposed earthworks, as is shown by the applicant's woodland felling and retention plans (see Figure 13.11(i)).

(c) Local interests

(i) Local Biodiversity Action Plan habitats

Broadleaved and mixed woodland, rivers and streams, and standing open water are all habitats present within the area that will be affected by the proposed remediation earthworks for which Habitat Action Plans have been written as part of the East Renfrewshire, Renfrewshire & Inverclyde Local Biodiversity Action Plan (LBAP).

All of these habitat types may be affected to some degree as a direct or indirect result of the earthworks. Most obviously, numerous trees will require to be felled. However, through implementation of the agreed Ecological Design and Management Plan opportunities exist to enhance all of these habitat types within the wider ROF site in the long-term, thereby contributing to the objectives of the LBAP.

(ii) Other

Extensive ecological surveys (including for such groups as lichens, flowering plants etc.) have been reported on in the ES submitted with this application, allowing the situation on the ground at present to be well understood. SNH also notes the commitment to further survey work (e.g. for invertebrates) and to ongoing monitoring to inform the proposed Ecological Design and Management Plan.

The full earthworks proposed will take place over a long (15 year) timescale and across a large area. Continuous ecological monitoring will therefore be essential in terms of understanding the impacts on

species and habitats as the development proceeds, as well as to allow for the identification of new or previously undiscovered ecological receptors and for their requirements to be incorporated into the evolving mitigation proposals.

2. Landscape and Visual

SNH have previously advised Renfrewshire Council in December 2006 with regard to landscape and visual impacts in relation to the Environmental Impact Assessment undertaken for the over-arching outlining application to decontaminate and redevelop the wider Royal Ordnance Factory (ROF) site at Bishopton. Following the submission of additional material by the applicants, we then provided additional comment to the planning authority in November 2008.

This landscape and visual impact advice covered a wide range of issues, much of which has some relevance to the earthworks proposals currently under consideration. However the key points raised by SNH were that, in our strong view, any outline permission for the proposals as a whole should be conditional on the applicants producing both a woodland clearance and retention plan for the full application site, and a structural landscape elements plan for the development area – both prior to any relevant works commencing on site. The detailed proposals in such plans should be guided by an identification and consideration of the local landscape character areas within the application site.

It is SNH's understanding that since that time, outline permission for the over-arching development proposals has been granted by Renfrewshire Council - and that this permission was indeed made subject to conditions requiring the above plans to be produced and submitted by the applicants prior to any works commencing. Though the full woodland clearance and retention plan and the structural landscape elements plan have (to our knowledge) yet to be produced, it remains the view of SNH that satisfactory plans of this nature would be sufficient to ensure that the landscape and visual impacts of the proposals as a whole are acceptable.

In terms of the proposed remediation and bulk earthworks specifically, the current ES contains a more detailed assessment of woodland quality/retention value, particularly in relation to the development area itself, and it is stated that this assessment will be used as far as possible in determining which trees can and should be retained. However it is recognised that trees will inevitably require to be removed to facilitate the proposed earthworks, and as such a plan has been produced (Figure 13.11i) showing areas of woodland within the development area to be removed as part of the earthworks, retained pending detailed design of the development, and confirmed for retention. It is less clear from the drawings provided which areas of trees in the wider application site (referred to as the Community Woodland Park in the ES) will require to be removed in relation to the earthworks, however it is stated that only a small proportion will be affected.

In addition to the loss of trees, many of the buildings within the development area will also be removed to facilitate these earthworks.

In terms of structural landscape elements specific to the proposed earthworks - these will consist of the new bulk fill areas within the development area and the "Landscape Mounds" around the wider site (as shown in Figure 3.17 of the ES) with their associated tree planting.

Given the sensitivities of the local landscape and the nature of the works to which this application relates, SNH is satisfied that the proposed remediation and bulk earthworks will not give rise to landscape and visual impacts of a scale that would warrant any significant objections on our part. As a result of this, and in light of our current resourcing restrictions in terms of landscape and visual impact expertise, SNH must unfortunately decline to offer any further comment in relation to this particular application with specific regard to whether individual elements of these proposals, such as the site selection for the Landscape Mounds etc., have been optimally designed in terms of local landscape fit and visual impacts.

We do, however, look forward to receiving copies of the required woodland clearance & retention and structural landscape elements plans for comment in relation to the wider development proposals once these have been submitted. To that end SNH is pleased to note that the current ES contains an analysis of local landscape character zones within the wider site has now been undertaken (see Figure 13.7). This will be of significant use in informing the optimal design and layout of structural landscape elements in relation to the wider proposals.

3. Recreation and Access

Public access to the majority of the site is currently highly restricted due to the nature of the work undertaken there. As a consequence, it is not likely that any of the operations proposed will necessitate the temporary or permanent closure of any existing public access routes. Opportunities for public recreational access to greenspace are likely to be significantly improved as a result of the development works which will ultimately follow site remediation and the introduction of the proposed Community Woodland Park to the south.

THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 1999

ENGINEERING OPERATIONS COMPRISING REMEDIATION & BULK EARTHWORKS AT THE FORMER ROYAL ORDNANCE FACTORY SITE, STATION ROAD, BISHOPTON

POLICY CONTEXT

- National Planning Policy Guideline (NPPG) 14 *Natural Heritage* states that the presence of protected species is a material consideration in the assessment of development proposals and that planning authorities should take particular care to avoid harm to species protected under the Wildlife 7 Countryside Act 1981 or European Directives.
- Scottish Planning Policy (SPP) 3 *Planning for Housing* states that in general "*Planning authorities should... promote the re-use of previously developed land in preference to greenfield land*".
- The application site at Bishopton has been listed as a priority for Community Growth in Strategic Policy 1(c) in the Twenty Year Development Vision produced as a part of the third alteration to the Glasgow and the Clyde Valley Joint Structure Plan in 2006.
- Section 8.14 of the Vision states that developments in such priority areas must be progressed in accordance with approved master plans and will be required among other things to create and manage interconnected greenspaces, to enhance the adjacent Green Belt and to ensure the stability of any new Green Belt boundary.
- Much of the application site and all of the development site is listed as a Major Area of Change within the Renfrewshire Local Plan and is covered by Policy SS2 of the Plan, requiring a master plan to be produced for its proposed redevelopment (in compliance with the Structure Plan policy above) in order for the Council to determine its future use.

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Legal Protection afforded to European Protected Species

All European Protected Species, including all species of bat and otter and their places of rest and/or shelter, are protected in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). These Regulations make it an offence to deliberately or recklessly:

- capture, injure or kill bats or otters;
- harass bats or otters;
- to disturb bats or otters while they are occupying a structure or place they use for shelter or protection;
- to disturb a bat or otter while rearing or otherwise caring for their young;
- to obstruct access to a breeding site or resting place of bats or otters, or to otherwise deny a bat or otter use of a breeding site or resting place;
- to disturb a bat or otter in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the relevant species;
- to disturb a bat or otter in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

It is also an offence to:

- damage or destroy a breeding site or resting place of bats or of otters;
- keep transport, sell or exchange or offer for sale or exchange any bat or otter, or any part or derivative of one.

Where it is proposed to carry out works, which will affect bats, otters or their shelter/breeding places - whether or not they are present in these refuges - a licence is required from the licensing authority (in this case likely to be the Scottish Government). It is strongly advised that you refer to the Scottish Government information on the current interim licensing arrangements, which can be found in the document European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities on Licensing Arrangements, (October 2001) before applying for a licence. Copies of this are available at <http://www.scotland.gov.uk/library3/environment/epsg-00.asp> or by writing to the Species Licensing Team, Landscape and Habitats Division, Scottish Government Rural Directorate, Area 1-J South, Victoria Quay, Edinburgh, EH6 6QQ (telephone 0131 244 7381).

As highlighted in the Interim Guidance, 3 tests must be satisfied before the licensing authority can issue a licence under Regulation 44(2) of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) to permit otherwise prohibited acts. An application for a licence will fail unless all of the 3 tests are satisfied.

Three tests as detailed in the Conservation Regulations.

The 3 tests which need to be applied to this case by both the planning authority when determining planning permission and the Scottish Government when considering the licence to allow the destruction of the roost are as follows:

- Test 1 - The licence application must demonstrably relate to one of the purposes specified in Regulation 44(2). For development proposals, the relevant purpose is likely to be (e) for which the Scottish Government is currently the licensing authority. This regulation states that licences may be granted by the Scottish Government only for the purpose of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment."
- Test 2 - Regulation 44(3)(a) states that a licence may not be granted unless the Scottish Government is satisfied "that there is no satisfactory alternative".
- Test 3 - Regulation 44(3)(b) states that the Scottish Government cannot issue a licence unless it is satisfied that the action proposed "will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range" (the Scottish Government will, however, seek the expert advice of Scottish Natural Heritage on this matter).

Consideration of European Protected Species must be included as part of the planning application process, not as an issue to be dealt with at a later stage. Any planning consent given without due consideration to these species is likely to breach European Directives with the possibility of consequential delays or the project being halted by the EC, as has happened previously.